

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the reasons that follow.

I. Status of the Claims

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

Claims 1-16, 20, 23-38, 43, 46, 53 and 54 are requested to be canceled without prejudice or disclaimer.

Claims 47 and 48 are requested to be amended. Exemplary support for the amendment to claims 47 and 48 can be found in original claim 23.

Claims 55-59 are requested to be added. Exemplary support for these new claims is shown in the table below.

New Claim	Exemplary Support
55	Original claim 4
56	Original claim 5
57	Original claim 6
58	Original claim 7
59	Original claim 20

Because the foregoing amendments do not introduce new matter, entry thereof by the Examiner is respectfully requested. Upon entry of the amendments, claims 47-52 and claims 55-59 will be pending and subject to examination on the merits.

II. Claim Objections

Claims 47-51 and 54 are objected to because ...[c]laim 47 contains non-elected inventions i.e. unwanted hair, and a wart.” Office Action at ¶ 10.

Claim 47 no longer recites these conditions and, therefore, this ground for objection is moot. Applicants reserve the right to pursue this subject matter in a divisional application.

III. Claim Rejections – 35 U.S.C. § 112, First Paragraph

A. Enablement

Claims 1-7, 9, 20, 23-29, 31, 43, 47, 49-51, and claim 54 stand rejected under 35 U.S.C. § 112, first paragraph, as allegedly lacking enablement. According to the Office Action, “the specification, while being enabling for a method of treating a benign tumor, a malignant tumor, hyperplasia, hypertrophy, overgrowth of a tissue and malformation of a tissue in a patient requiring removal or destruction of cells comprising locally administering (e.g. topically, intratumorally) to a mammal in need a therapeutically effective amount of the neural thread protein consisting of SEQ ID NO. 10, does not reasonably provide enablement for a method of treating any and all conditions in a patient requiring removal or destruction of cells comprising systemically administering (e.g. intravenously, intra-arterially, intraperitoneally) to a mammal in need of a therapeutically effective amount of any and all neural thread protein (NTP) as well as fragments, variant, derivative, homolog, reverse-D peptide, and enantiomers of NTP.” Office Action at ¶ 6 (emphasis original). Applicant respectfully traverses this ground of rejection.

While not acquiescing in the propriety of the rejection, Applicant has amended the claims. Claim 47 now recites that “the condition is selected from the group consisting of a tumor, hyperplasia, hypertrophy, and overgrowth of tissue.” These are the conditions for which enablement is acknowledged by the Office Action. In addition, claim 47 now defines the NTP as “AD7c-NTP (SEQ ID NO: 10), the proteins identified by SEQ ID NOs. 2 to 9, neural pancreatic thread protein, [or] pancreatic thread protein.”

The specification contains a complete description adequate to enable one of skill in the art to practice the claimed invention without undue experimentation. For example, the specification provides the amino acid sequences for the NTPs recited by the claims. *See e.g.*, Figs. 1-9; pages 9-10. Thus, one of skill in the art can readily obtain the recited peptides. The specification also teaches that exposing tissue to NTP kills the tissue. In fact, the working examples demonstrate that NTP induced acute necrosis regardless of the type of tissues tested or its origin. Because the conditions recited by claim 47 all require removal or destruction of cells, one of skill in the art would expect that the NTP could be used to treat the full scope of these conditions. Thus, the specification contains sufficient guidance to allow one of skill in the art to make and use the claimed invention.

B. Written Description

Claims 1-7, 9, 20, 23-29, 31, 43, 47, 49-51, and 54 stand rejected under 35 U.S.C. § 112, first paragraph, as allegedly lacking written description support. According to the Office Action, the NTPs encompassed by these claims are not sufficiently defined.

While not acquiescing in the propriety of the rejection, Applicant has amended the claims to recite only NTPs for which the specification provides specific amino acid sequences. By providing the amino acid sequences, the specification provides a complete description of the recited NTPs. Accordingly, the amendment renders this ground of rejection moot.

IV. Double Patenting

A. Rejection Over U.S. Patent No. 6,924,266

Claims 1-7, 9, 47, and 49-51 stand rejected under the judicially created doctrine of obviousness-type double patenting as being allegedly unpatentable over claims 4-7 of U.S. Patent No. 6,924,266.

Applicant encloses a terminal disclaimer disclaiming the term of any patent issuing from the present application that extends beyond the term of the '266 patent. Thus, the terminal disclaimer renders this rejection moot.

B. Rejection Over Co-Pending Applications

Claims 1-7, 9, 47, and 49-51 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being allegedly unpatentable over “claims 12-16 and 18 of copending Application No. 10/294,891 and claims 9-13 and 15 of copending Application No. 10/920,313.” Office Action at ¶ 9.

Applicant notes the provisional nature of this rejection and will address the rejection on the merits if it ever matures into a non-provisional rejection.

V. Claim Rejections – 35 U.S.C. § 102

Claims 1-5, 7, 9, 20, 23-27, 29, 31, 43, 47, and 49-51 stand rejected under 35 U.S.C. § 102(b) as allegedly anticipated by U.S. Patent No. 6,620,922 to Xu *et al.* According to the Office Action, “[b]ecause the SEQ ID NO.573 is 61.5% identical to the instant claimed SEQ ID NO.10 (see sequence alignment Exhibit A), the polypeptide of SEQ ID NO.573 reads on the claimed NTP, which encompasses fragments and variants of SEQ ID NO.10.” Office Action at ¶ 12. Applicant respectfully traverses this ground of rejection.

Xu cannot anticipate the claims, because Xu does not teach the recited NTPs. More specifically, the claims no longer recite “fragments and variants of SEQ ID NO.10.” Thus, Xu’s SEQ ID NO: 573 does not read on the recited NTPs. For at least this reason, Xu does not anticipate the claimed invention.

CONCLUSION

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

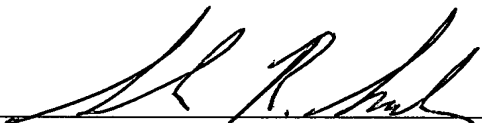
The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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